IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 17TH APRIL 2007 / 27TH CHAITHRA 1929

WP(C).No. 13420 of 2007(V)

PETITIONER:

PARAGON STEELS PVT.LTD.,
UNIT II, 336/2 PARA ROAD, NEAR N I D A,
KANJIKODE, PALAKKAD REPRESENTED BY ITS ACCOUNTS
MANAGER, SHAJI MATHEW.

BY ADV. SRI.V.GIRI

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, TAXES (B)
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE INTELLIGENCE OFFICER (IB),
OFFICE OF INSPECTING ASST. COMMISSIONER,
(INTELLIGENCE), COMMERCIAL TAXES, PALAKKAD.

BY G.P.SHRI.MATHEW GEORGE VADAKKETHIL.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.13420 of 2007

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Dated this the 17th day of April, 2007

J U D G M E N T

The petitioner challenges Ext.P7 notice issued by the 2nd respondent under Section 45A(2) of the Kerala General Sales Tax Act, 1963. The contention of the petitioner is that this notice has been issued without application of mind as is evident from the previous proceedings. He points out that earlier by Ext.P5 notice issued under section 67 of the Value Added Tax, 2003 an exactly identical notice has been issued, to which the petitioner has filed Ext.P6 reply and three months thereafter again Ext.P7 notice has been issued under Section 45A(2) of the KGST Act. In spite of Ext.P6 reply on the same set of facts, Ext.P7 notice has been issued. The learned counsel for the petitioner points out that in Ext.P5 the very same officer says that "almost nine months have elapsed after your letter you have neither produced the books of

accounts nor the final judgment of the AC in your appeal" and he reproduced the very same sentence in Ext.P7 containing the words '9 months', although three more months had elapsed by then. According to counsel, this itself shows that the 2nd respondent has not applied his mind. The petitioner therefore, apprehends that the petitioner is not likely to get a considered order from 2nd respondent pursuant to Ext.P7, even if he again files a reply as he has done by Ext.P6,

2. After hearing the learned counsel for the petitioner I am not inclined to entertain this writ petition at this stage since Ext.P7 is admittedly a show-cause notice and the petitioner has only been directed to show-cause against the finalisation of the proposal in Ext.P7 to impose penalty on the petitioner. However, I direct that the 2nd respondent shall consider each and every objection of the petitioner to be raised by him in his reply and enter a specific finding on each and every contention giving reasoning as to why the

petitioner's reply should not be accepted. The 2nd respondent shall also take into account the fact that against Exts.P1 and P2 a writ petition has been filed before this court as W.P(C).No.15611/2005 which is pending and consider whether while that writ petition is pending, which has a direct nexus with the proposal for imposition of penalty, Ext.P7 should be proceeded for the present. The petitioner shall also be given two more weeks' time to file his objections and give him an opportunity of being heard thereafter. The 2nd respondent shall issue a fresh notice intimating the petitioner the date of hearing after the expiry of the two weeks now granted for filing the reply.

Writ petition is disposed of as above.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.